IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No. 104 of 1991

For Approval and Signature:

THE HON'BLE MISS JUSTICE R.M.DOSHIT

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 of any order made thereunder ?

5 Whether it is to be circulated to the civil judge?

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PADMABEN WD/O CHANDULAL CHIMANLAL SHAH & 5 - Petitioner(s)

Versus

MRUDULABEN WD/O SHANTILAL VAIDYA & 2 - Respondent(s)

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Appearance :

MR JITENDRA M PATEL for Petitioner No(s).: 1,2,3,4,5.
MR SD SUTHAR for
MR NK MAJMUDAR for Respondents.

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CORAM :THE HON'BLE MISS JUSTICE R.M.DOSHIT

Date : 21/06/2005

ORAL JUDGMENT

Feeling aggrieved by the judgment and order dated 18th December, 1990 passed by the learned Joint District Judge, Vadodara in Regular Civil Appeal No. 428 of 1981, the appellants-defendants in Rent Suit No. 297 of 1997 have preferred the present Revision Application under Section 29 (2) of the Bombay Rents, Hotel & Lodging House

Rates Control Act, 1947 [hereinafter referred to as, “the Rent Act”]. The respondents-plaintiffs are the owners of the suit shop situated at Vadodara. The suit shop was leased to one Chandulal Shah by the predecessor-in-title of the plaintiffs for a monthly rent of Rs. 17/=. The said Shri Chandulal Shah died in the month of July, 1975. The plaintiffs instituted Rent Suit No. 297 of 1977 against the defendants nos. 1 to 4, the heirs of the deceased Chandulal Shah and defendant no.5, the alleged sub-tenant, in the Court of Small Causes at Vadodara for recovery of possession of the suit shop on the grounds that the deceased Chandulal Shah was in arrears of rent since 1st July, 1971; that inspite of the notice of demand as envisaged by Section 12 (2) of the Rent Act, the defendants nos. 1 to 4 failed to remit the amount of arrears of rent, and that the deceased Chandulal Shah had unlawfully sublet or assigned the suit shop to the defendant no.5. The learned trial Judge, by judgment and order dated 7th October, 1981, allowed the suit and passed decree for possession in favour of the plaintiffs on the ground that the suit shop was unlawfully sublet to the defendant no.5. Feeling aggrieved, the defendants preferred Regular Civil Appeal No. 428 of 1981 in the Court of learned District Judge, Vadodara. The learned Joint District Judge, by judgment and order dated 18th

December, 1990, dismissed the Appeal. Therefore, the present Revision Application.

Mr. Patel has submitted that the finding of subletting recorded by both the Courts below is *per verse* and is not supported by the evidence on record. He has submitted that the defendant no.2 gave oral evidence and produced documentary evidence to support that it was the defendant no.2 who was issued licence under the Shops & Establishments Act; that the defendant no.5 was the servant in the suit shop and was paid monthly salary.

I am afraid, I am unable to agree with Mr. Patel. In reply to the suit notice, the defendant no.2 had categorically stated that the defendant no.5 was the assignee in the suit shop. In the written statement Exh.15, the defendants denied that the suit shop was sublet or assigned to the defendant no.5 as alleged and that the defendant no.5 was permitted to sit in the suit shop to assist the defendant no.2 in his business. Whereas, in the oral evidence, the defendant no.2 deposed that the defendant no.5 was his servant and was paid monthly salary. *Evidently*, the defendants nos. 1 to 4 have over the course of time improved their statements – from reply to the suit notice to written statement and to

oral evidence. The finding of subletting recorded by the Courts below cannot be said to be *per verse* or not supported by the evidence on record.

In view of the above discussion, the Revision Application is dismissed with cost. Rule is discharged. *Interim* relief is vacated.

Mr. Patel has submitted that the defendants be given three years' time to vacate the suit shop and to hand-over vacant possession to the plaintiffs. I am afraid, the request made by Mr. Patel is not reasonable. As recorded hereinabove, the suit was instituted as far back as in the year 1977. The decree for eviction was passed against the defendants in the year 1981 i.e. Before some twenty five years. However, in the interest of justice, it is directed that the decree for eviction passed against the defendants in Rent Suit NO. 297 of 1977 passed by the Small Causes Court, Vadodara shall not be executed till 31st December, 2005 on condition that the defendants shall handover vacant possession of the suit shop to the plaintiffs on or before 1st January, 2006 and on the defendants' giving an undertaking to this Court in usual terms. Such undertaking shall be given by each defendant and a copy of the undertaking shall be given to

the learned advocate Mr. N.K Majmudar. It is further directed that commencing from 1st June, 2005, the defendants shall pay occupancy fee of Rs.150/= per month. Such fee shall be paid to the plaintiffs on or before 10th day of the next succeeding month. In the event, the defendants fail to handover the vacant possession of the suit shop to the plaintiffs on or before 1st January, 2006; commencing from 1st January, 2006, the defendants shall have to pay occupancy fee of Rs. 300/= every month.

{Miss R.M Doshit, J.}

*Prakash**